

TITLE 78 RECODIFICATION - TITLE 78B**CHAPTER 11**

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

Title 78B, Chapter 11, Utah Uniform Arbitration Act.

Highlighted Provisions:

This bill:

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Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**RENUMBERS AND AMENDS:**

78B-11-101, (Renumbered from 78-31a-101, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-102, (Renumbered from 78-31a-102, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-103, (Renumbered from 78-31a-103, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-104, (Renumbered from 78-31a-104, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-105, (Renumbered from 78-31a-105, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-106, (Renumbered from 78-31a-106, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-107, (Renumbered from 78-31a-107, as enacted by Laws of Utah 2002, Chapter 326)

- 32 **78B-11-108**, (Renumbered from 78-31a-108, as enacted by Laws of Utah 2002, Chapter
33 326)
- 34 **78B-11-109**, (Renumbered from 78-31a-109, as enacted by Laws of Utah 2002, Chapter
35 326)
- 36 **78B-11-110**, (Renumbered from 78-31a-110, as enacted by Laws of Utah 2002, Chapter
37 326)
- 38 **78B-11-111**, (Renumbered from 78-31a-111, as enacted by Laws of Utah 2002, Chapter
39 326)
- 40 **78B-11-112**, (Renumbered from 78-31a-112, as enacted by Laws of Utah 2002, Chapter
41 326)
- 42 **78B-11-113**, (Renumbered from 78-31a-113, as enacted by Laws of Utah 2002, Chapter
43 326)
- 44 **78B-11-114**, (Renumbered from 78-31a-114, as enacted by Laws of Utah 2002, Chapter
45 326)
- 46 **78B-11-115**, (Renumbered from 78-31a-115, as enacted by Laws of Utah 2002, Chapter
47 326)
- 48 **78B-11-116**, (Renumbered from 78-31a-116, as enacted by Laws of Utah 2002, Chapter
49 326)
- 50 **78B-11-117**, (Renumbered from 78-31a-117, as enacted by Laws of Utah 2002, Chapter
51 326)
- 52 **78B-11-118**, (Renumbered from 78-31a-118, as last amended by Laws of Utah 2005,
53 Chapter 100)
- 54 **78B-11-119**, (Renumbered from 78-31a-119, as enacted by Laws of Utah 2002, Chapter
55 326)
- 56 **78B-11-120**, (Renumbered from 78-31a-120, as enacted by Laws of Utah 2002, Chapter
57 326)
- 58 **78B-11-121**, (Renumbered from 78-31a-121, as last amended by Laws of Utah 2007,
59 Chapter 306)
- 60 **78B-11-122**, (Renumbered from 78-31a-122, as enacted by Laws of Utah 2002, Chapter
61 326)
- 62 **78B-11-123**, (Renumbered from 78-31a-123, as last amended by Laws of Utah 2005,

Chapter 156)

78B-11-124, (Renumbered from 78-31a-124, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-125, (Renumbered from 78-31a-125, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-126, (Renumbered from 78-31a-126, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-127, (Renumbered from 78-31a-127, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-128, (Renumbered from 78-31a-128, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-129, (Renumbered from 78-31a-129, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-130, (Renumbered from 78-31a-130, as enacted by Laws of Utah 2002, Chapter 326)

78B-11-131, (Renumbered from 78-31a-131, as enacted by Laws of Utah 2002, Chapter 326)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-11-101**, which is renumbered from Section 78-31a-101 is renumbered and amended to read:

CHAPTER 11. UTAH UNIFORM ARBITRATION ACT

~~[78-31a-101]~~. **78B-11-101**. **Title.**

This chapter is known as the "Utah Uniform Arbitration Act."

Section 2. Section **78B-11-102**, which is renumbered from Section 78-31a-102 is renumbered and amended to read:

~~[78-31a-102]~~. **78B-11-102**. **Definitions.**

As used in this chapter:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is

93 involved in the appointment of an arbitrator.

94 (2) "Arbitrator" means an individual appointed to render an award, alone or with
95 others, in a controversy that is subject to an agreement to arbitrate.

96 (3) "Court" means a court of competent jurisdiction in this state.

97 (4) "Knowledge" means actual knowledge.

98 (5) "Person" means an individual, corporation, business trust, estate, trust, partnership,
99 limited liability company, association, joint venture, government, governmental subdivision,
100 agency, or instrumentality, public corporation, or any other legal or commercial entity.

101 (6) "Record" means information that is inscribed on a tangible medium or that is stored
102 in an electronic or other medium and is retrievable in perceivable form.

103 Section 3. Section **78B-11-103**, which is renumbered from Section 78-31a-103 is
104 renumbered and amended to read:

105 **~~[78-31a-103].~~ 78B-11-103. Notice.**

106 (1) Except as otherwise provided in this chapter, a person gives notice to another
107 person by taking action that is reasonably necessary to inform the other person in ordinary
108 course, whether or not the other person acquires knowledge of the notice.

109 (2) A person has notice if the person has knowledge of the notice or has received
110 notice.

111 (3) A person receives notice when it comes to the person's attention or the notice is
112 delivered at the person's place of residence or place of business, or at another location held out
113 by the person as a place of delivery of such communications.

114 Section 4. Section **78B-11-104**, which is renumbered from Section 78-31a-104 is
115 renumbered and amended to read:

116 **~~[78-31a-104].~~ 78B-11-104. Application.**

117 (1) This chapter applies to any agreement to arbitrate made on or after May 6, 2002.

118 (2) This chapter applies to any agreement to arbitrate made before May 6, 2002, if all
119 the parties to the agreement or to the arbitration proceeding agree on the record.

120 Section 5. Section **78B-11-105**, which is renumbered from Section 78-31a-105 is
121 renumbered and amended to read:

122 **~~[78-31a-105].~~ 78B-11-105. Effect of agreement to arbitrate -- Nonwaivable**
123 **provisions.**

(1) Except as otherwise provided in Subsections (2) and (3), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) waive or agree to vary the effect of the requirements of Subsection ~~[78-31a-106(1), 78-31a-107(1), 78-31a-118(1) or (2)]~~ 78B-11-106(1), 78B-11-107(1), 78B-11-118(1) or (2), or Section [78-31a-109, 78-31a-127, or 78-31a-129] 78B-11-109, 78B-11-127, or 78B-11-129;

(b) agree to unreasonably restrict the right under Section ~~[78-31a-110]~~ 78B-11-110 to notice of the initiation of an arbitration proceeding;

(c) agree to unreasonably restrict the right under Section ~~[78-31a-113]~~ 78B-11-113 to disclosure of any facts by a neutral arbitrator; or

(d) waive the right under Section ~~[78-31a-117]~~ 78B-11-117 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or Sections ~~[78-31a-108, 78-31a-115, 78-31a-119, 78-31a-123 through 78-31a-125, 78-31a-130]~~ 78B-11-108, 78B-11-115, 78B-11-119, 78B-11-123 through 78B-11-125, 78B-11-130, Subsection [78-31a-104(1), 78-31a-121(3) or (4), or 78-31a-126(1) or (2)] 78B-11-104(1), 78B-11-121(3) or (4), or 78B-11-126(1) or (2).

Section 6. Section **78B-11-106**, which is renumbered from Section 78-31a-106 is renumbered and amended to read:

~~[78-31a-106].~~ 78B-11-106. Application for judicial relief.

(1) Except as otherwise provided in Section ~~[78-31a-129]~~ 78B-11-129, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in

the manner provided by law or rule of court for serving motions in pending cases.

Section 7. Section **78B-11-107**, which is renumbered from Section 78-31a-107 is renumbered and amended to read:

~~[78-31a-107].~~ 78B-11-107. Validity of agreement to arbitrate.

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Section 8. Section **78B-11-108**, which is renumbered from Section 78-31a-108 is renumbered and amended to read:

~~[78-31a-108].~~ 78B-11-108. Motion to compel arbitration.

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(b) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(3) If the court finds that there is no enforceable agreement, it may not, pursuant to Subsection (1) or (2), order the parties to arbitrate.

(4) The court may not refuse to order arbitration because the claim subject to

arbitration lacks merit or grounds for the claim have not been established.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in Section ~~[78-31a-128]~~ 78B-11-128.

(6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Section 9. Section **78B-11-109**, which is renumbered from Section 78-31a-109 is renumbered and amended to read:

~~[78-31a-109].~~ **78B-11-109. Provisional remedies.**

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:

(a) the arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(b) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under Subsection (1) or (2).

Section 10. Section **78B-11-110**, which is renumbered from Section 78-31a-110 is renumbered and amended to read:

~~[78-31a-110].~~ **78B-11-110. Initiation of arbitration.**

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person objects for lack or insufficiency of notice under Subsection ~~[78-31a-116]~~ 78B-11-116(3) not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

Section 11. Section **78B-11-111**, which is renumbered from Section 78-31a-111 is renumbered and amended to read:

~~[78-31a-111].~~ **78B-11-111. Consolidation of separate arbitration proceedings.**

(1) Except as otherwise provided in Subsection (3), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(a) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Section 12. Section **78B-11-112**, which is renumbered from Section 78-31a-112 is renumbered and amended to read:

~~[78-31a-112].~~ **78B-11-112. Appointment of arbitrator -- Service as a**

neutral arbitrator.

(1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed by the court has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(2) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Section 13. Section **78B-11-113**, which is renumbered from Section 78-31a-113 is renumbered and amended to read:

~~[78-31a-113].~~ **78B-11-113. Disclosure by arbitrator.**

(1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) a financial or personal interest in the outcome of the arbitration proceeding; and

(b) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by Subsection (1) or (2) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under Subsection ~~[78-31a-124]~~ **78B-11-124(1)(b)** for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by Subsection (1) or (2), upon timely objection by a party, the court under Subsection ~~[78-31a-124]~~ **78B-11-124(1)(b)** may

279 vacate an award.

280 (5) An arbitrator appointed as a neutral arbitrator who does not disclose a known,
281 direct, and material interest in the outcome of the arbitration proceeding or a known, existing,
282 and substantial relationship with a party is presumed to act with evident partiality under
283 Subsection [~~78-31a-124~~] 78B-11-124(1)(b).

284 (6) If the parties to an arbitration proceeding agree to the procedures of an arbitration
285 organization or any other procedures for challenges to arbitrators before an award is made,
286 substantial compliance with those procedures is a condition precedent to a motion to vacate an
287 award on that ground under Subsection [~~78-31a-124~~] 78B-11-124(1)(b).

288 Section 14. Section **78B-11-114**, which is renumbered from Section 78-31a-114 is
289 renumbered and amended to read:

290 [~~78-31a-114~~]. **78B-11-114. Action by majority.**

291 If there is more than one arbitrator, the powers of an arbitrator must be exercised by a
292 majority of the arbitrators, but all of them shall conduct the hearing under Subsection
293 [~~78-31a-116~~] 78B-11-116(3).

294 Section 15. Section **78B-11-115**, which is renumbered from Section 78-31a-115 is
295 renumbered and amended to read:

296 [~~78-31a-115~~]. **78B-11-115. Immunity of arbitrator -- Competency to testify**
297 **-- Attorney's fees and costs.**

298 (1) An arbitrator or an arbitration organization acting in that capacity is immune from
299 civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

300 (2) The immunity afforded by this section supplements any immunity under other law.

301 (3) The failure of an arbitrator to make a disclosure required by Section [~~78-31a-113~~]
302 78B-11-113 does not cause any loss of immunity under this section.

303 (4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of
304 an arbitration organization is not competent to testify, and may not be required to produce
305 records as to any statement, conduct, decision, or ruling occurring during the arbitration
306 proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity.
307 This Subsection (4) does not apply:

308 (a) to the extent necessary to determine the claim of an arbitrator, arbitration
309 organization, or representative of the arbitration organization against a party to the arbitration

310 proceeding; or

311 (b) to a hearing on a motion to vacate an award under Subsection [~~78-31a-124~~]
312 78B-11-124(1)(a) or (b) if the movant establishes prima facie evidence that a ground for
313 vacating the award exists.

314 (5) If a person commences a civil action against an arbitrator, arbitration organization,
315 or representative of an arbitration organization arising from the services of the arbitrator,
316 organization, or representative or if a person seeks to compel an arbitrator or a representative of
317 an arbitration organization to testify or produce records in violation of Subsection (4), and the
318 court decides that the arbitrator, arbitration organization, or representative of an arbitration
319 organization is immune from civil liability or that the arbitrator or representative of the
320 organization is not competent to testify, the court shall award to the arbitrator, organization, or
321 representative reasonable attorney's fees and other reasonable expenses of litigation.

322 Section 16. Section **78B-11-116**, which is renumbered from Section 78-31a-116 is
323 renumbered and amended to read:

324 ~~[78-31a-116].~~ **78B-11-116. Arbitration process.**

325 (1) An arbitrator may conduct an arbitration in a manner the arbitrator considers
326 appropriate for a fair and expeditious disposition of the proceeding. The authority conferred
327 upon the arbitrator includes the power to hold conferences with the parties to the arbitration
328 proceeding before the hearing and, among other matters, determine the admissibility, relevance,
329 materiality, and weight of any evidence.

330 (2) An arbitrator may decide a request for summary disposition of a claim or particular
331 issue:

332 (a) if all interested parties agree; or

333 (b) upon request of one party to the arbitration proceeding if that party gives notice to
334 all other parties to the proceeding, and the other parties have a reasonable opportunity to
335 respond.

336 (3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give
337 notice of the hearing not less than five days before the hearing begins. Unless a party to the
338 arbitration proceeding makes an objection to lack or insufficiency of notice not later than the
339 beginning of the hearing, the party's appearance at the hearing waives the objection. Upon
340 request of a party to the arbitration proceeding and for good cause shown, or upon the

arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under Subsection (3), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section ~~[78-31a-112]~~ 78B-11-112 to continue the proceeding and to resolve the controversy.

Section 17. Section **78B-11-117**, which is renumbered from Section 78-31a-117 is renumbered and amended to read:

~~[78-31a-117].~~ **78B-11-117. Representation.**

A party to an arbitration proceeding may be represented by an attorney.

Section 18. Section **78B-11-118**, which is renumbered from Section 78-31a-118 is renumbered and amended to read:

~~[78-31a-118].~~ **78B-11-118. Witnesses -- Subpoenas -- Depositions -- Discovery.**

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit any discovery the arbitrator decides is appropriate in the

372 circumstances, taking into account the needs of the parties to the arbitration proceeding and
373 other affected persons and the desirability of making the proceeding fair, expeditious, and
374 cost-effective.

375 (4) If an arbitrator permits discovery under Subsection (3), the arbitrator may order a
376 party to the arbitration proceeding to comply with the arbitrator's discovery-related orders,
377 issue subpoenas for the attendance of a witness and for the production of records and other
378 evidence at a discovery proceeding, and take action against a noncomplying party to the extent
379 a court could if the controversy were the subject of a civil action in this state.

380 (5) An arbitrator may issue a protective order to prevent the disclosure of privileged
381 information, confidential information, trade secrets, and other information protected from
382 disclosure to the extent a court could if the controversy were the subject of a civil action in this
383 state.

384 (6) All laws compelling a person under subpoena to testify and all fees for attending a
385 judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration
386 proceeding as if the controversy were the subject of a civil action in this state.

387 (7) The court may enforce a subpoena or discovery-related order for the attendance of a
388 witness within this state and for the production of records and other evidence issued by an
389 arbitrator in connection with an arbitration proceeding in another state upon conditions
390 determined by the court so as to make the arbitration proceeding fair, expeditious, and
391 cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state
392 must be served in the manner provided by law for service of subpoenas in a civil action in this
393 state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator,
394 enforced in the manner provided by law for enforcement of subpoenas in a civil action in this
395 state.

396 (8) Upon stipulation of the parties, or where a statute or the written agreement of the
397 parties provides that discovery shall be conducted in accordance with the Rules of Civil
398 Procedure, an attorney may issue a subpoena for the attendance of a witness and for the
399 production of records and other evidence at any hearing. A subpoena must be served in the
400 manner for service of subpoenas in a civil action and, upon motion to the court by a party to the
401 arbitration proceeding, enforced in the manner for enforcement of subpoenas in a civil action.

402 Section 19. Section **78B-11-119**, which is renumbered from Section 78-31a-119 is

renumbered and amended to read:

~~[78-31a-119].~~ 78B-11-119. Judicial enforcement of preaward ruling by arbitrator.

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section ~~[78-31a-120]~~ 78B-11-120. A prevailing party may make a motion to the court for an expedited order to confirm the award under Section ~~[78-31a-123]~~ 78B-11-123, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under Section ~~[78-31a-124 or 78-31a-125]~~ 78B-11-124 or 78B-11-125.

Section 20. Section **78B-11-120**, which is renumbered from Section 78-31a-120 is renumbered and amended to read:

~~[78-31a-120].~~ 78B-11-120. Award.

(1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified in the agreement, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree on the record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

Section 21. Section **78B-11-121**, which is renumbered from Section 78-31a-121 is renumbered and amended to read:

~~[78-31a-121].~~ 78B-11-121. Change of award by arbitrator.

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) on any grounds stated in Subsection 78-31a-125(1)(a) or (c);

(b) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) to clarify the award.

(2) A motion under Subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

(4) If a motion to the court is pending under Section 78-31a-123, 78-31a-124, or 78-31a-125, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) on any grounds stated in Subsection 78-31a-125(1)(a) or (c);

(b) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) to clarify the award.

(5) An award modified or corrected pursuant to this section is subject to Subsection 78-3a-120(1) and Sections 78-31a-123, 78-31a-124, and ~~[78-31a-125]~~ 78B-11-125.

Section 22. Section **78B-11-122**, which is renumbered from Section 78-31a-122 is renumbered and amended to read:

~~[78-31a-122].~~ **78B-11-122. Remedies -- Fees and expenses of arbitration proceeding.**

(1) An arbitrator may award punitive damages or other exemplary relief if the award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if the award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by Subsections (1) and (2), an arbitrator may order any remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section ~~[78-31a-123]~~ 78B-11-123 or for vacating an award under Section ~~[78-31a-124]~~ 78B-11-124.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under Subsection (1), the arbitrator shall specify in the award the basis in fact justifying, and the basis in law authorizing, the award and state separately the amount of the punitive damages or other exemplary relief.

Section 23. Section **78B-11-123**, which is renumbered from Section 78-31a-123 is renumbered and amended to read:

~~[78-31a-123].~~ 78B-11-123. Confirmation of award.

After a party to an arbitration proceeding receives notice of an award in a matter not pending before a court, the party may petition the court for an order confirming the award. If the notice of award is in a matter pending before the court, the party may file a motion for an order confirming the award. The court shall issue a confirming order unless the award is modified or corrected pursuant to Section ~~[78-31a-121 or 78-31a-125]~~ 78B-11-124 or 78B-11-125 or is vacated pursuant to Section ~~[78-31a-124]~~ 78B-11-124.

Section 24. Section **78B-11-124**, which is renumbered from Section 78-31a-124 is renumbered and amended to read:

~~[78-31a-124].~~ 78B-11-124. Vacating an award.

(1) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was:
 - (i) evident partiality by an arbitrator appointed as a neutral arbitrator;
 - (ii) corruption by an arbitrator; or
 - (iii) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (c) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section ~~[78-31a-116]~~ 78B-11-116, so as to substantially prejudice the rights of a party to the arbitration proceeding;
- (d) an arbitrator exceeded the arbitrator's authority;
- (e) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising an objection under Subsection ~~[78-31a-116]~~ 78B-11-116(3) not

later than the beginning of the arbitration hearing; or

(f) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section ~~[78-31a-110]~~ 78B-11-110 so as to substantially prejudice the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to Section ~~[78-31a-120]~~ 78B-11-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section ~~[78-31a-121]~~ 78B-11-121, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(3) If the court vacates an award on a ground other than that set forth in Subsection (1)(e), it may order a rehearing. If the award is vacated on a ground stated in Subsection (1)(a) or (b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in Subsection (1)(c), (d), or (f), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in Subsection ~~[78-31a-120]~~ 78B-11-120(2) for an award.

(4) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Section 25. Section **78B-11-125**, which is renumbered from Section 78-31a-125 is renumbered and amended to read:

~~[78-31a-125].~~ **78B-11-125. Modification or correction of award.**

(1) Upon motion made within 90 days after the movant receives notice of the award pursuant to Section ~~[78-31a-120]~~ 78B-11-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section ~~[78-31a-121]~~ 78B-11-121, the court shall modify or correct the award if:

(a) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(b) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted;

or

(c) the award is imperfect in a matter of form not affecting the merits of the decision on

527 the claims submitted.

528 (2) If a motion made under Subsection (1) is granted, the court shall modify or correct
529 and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is
530 pending, the court shall confirm the award.

531 (3) A motion to modify or correct an award pursuant to this section may be joined with
532 a motion to vacate the award.

533 Section 26. Section **78B-11-126**, which is renumbered from Section 78-31a-126 is
534 renumbered and amended to read:

535 **~~[78-31a-126].~~ 78B-11-126. Judgment on award -- Attorney's fees and**
536 **litigation expenses.**

537 (1) Upon granting an order confirming, vacating without directing a rehearing,
538 modifying, or correcting an award, the court shall enter a judgment conforming to the award.
539 The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

540 (2) A court may allow reasonable costs of the motion and subsequent judicial
541 proceedings.

542 (3) On application of a prevailing party to a contested judicial proceeding under
543 Section ~~[78-31a-123, 78-31a-124, or 78-31a-125]~~ 78B-11-123, 78B-11-124, or 78B-11-125,
544 the court may add reasonable attorney's fees and other reasonable expenses of litigation
545 incurred in a judicial proceeding after the award is made to a judgment confirming, vacating
546 without directing a rehearing, modifying, or correcting an award.

547 Section 27. Section **78B-11-127**, which is renumbered from Section 78-31a-127 is
548 renumbered and amended to read:

549 **~~[78-31a-127].~~ 78B-11-127. Jurisdiction.**

550 (1) A court of this state having jurisdiction over the controversy and the parties may
551 enforce an agreement to arbitrate.

552 (2) An agreement to arbitrate providing for arbitration in this state confers exclusive
553 jurisdiction on the court to enter judgment on an award under this chapter.

554 Section 28. Section **78B-11-128**, which is renumbered from Section 78-31a-128 is
555 renumbered and amended to read:

556 **~~[78-31a-128].~~ 78B-11-128. Venue.**

557 A motion pursuant to Section ~~[78-31a-106]~~ 78B-11-106 must be made in the court of

the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

Section 29. Section **78B-11-129**, which is renumbered from Section 78-31a-129 is renumbered and amended to read:

~~[78-31a-129].~~ 78B-11-129. Appeals.

(1) An appeal may be taken from:

- (a) an order denying a motion to compel arbitration;
- (b) an order granting a motion to stay arbitration;
- (c) an order confirming or denying confirmation of an award;
- (d) an order modifying or correcting an award;
- (e) an order vacating an award without directing a rehearing; or
- (f) a final judgment entered pursuant to this chapter.

(2) An appeal under this section must be taken as from an order or a judgment in a civil action.

Section 30. Section **78B-11-130**, which is renumbered from Section 78-31a-130 is renumbered and amended to read:

~~[78-31a-130].~~ 78B-11-130. Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Section 31. Section **78B-11-131**, which is renumbered from Section 78-31a-131 is renumbered and amended to read:

~~[78-31a-131].~~ 78B-11-131. Effect of chapter on prior agreements or proceedings.

589 This act does not affect an action or proceeding commenced or right accrued before this
590 chapter takes effect. Subject to Section [~~78-31a-104~~] 78B-11-104 of this chapter, an arbitration
591 agreement made before May 6, 2002 shall be governed by the arbitration act in force on the
592 date the agreement was signed.